J. MICHAEL KALER, SBN 158296
9930 Mesa Rim Road, Suite 200
San Diego, California 92121
Telephone (858) 362-3151
E-mail: michael@kalerlaw.com

MELODY A. KRAMER, SBN 169984
9930 Mesa Rim Road, Suite 1600
San Diego, California 92121
Telephone (858) 362-3150
E-mail: mak@kramerlawip.com

PATRICIA SHACKELFORD, SBN 218647
9930 Mesa Rim Road, Suite 450
San Diego, California 92121
Telephone (858) 362-3152

Attorneys for Plaintiff JENS ERIK SORENSEN, as Trustee of SORENSEN RESEARCH AND DEVELOPMENT TRUST

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF CALIFORNIA

JENS ERIK SORENSEN, as Trustee of SORENSEN RESEARCH AND DEVELOPMENT TRUST, Plaintiff v. THE BLACK & DECKER CORPORATION; BLACK & DECKER, INC.; BLACK & DECKER (US), INC.; PORTER-CABLE CORPORATION; VECTOR PRODUCTS, INC.; PHILLIPS PLASTICS CORPORATION; HI-TECH PLASTICS INC.; B&D HOLDINGS, LLC; AND DOES 1 THROUGH 1000, Defendants.	Case Nos. 06-CV-1572 BTM (CAB) **MEMORANDUM OF POINTS & AUTHORITIES IN SUPPORT OF PLAINTIFF'S MOTION TO CONSOLIDATE** Date: May 30, 2008 Time: 11:00 a.m. Courtroom: 15, Fifth Floor Hon. Barry Ted Moskowitz *NO ORAL ARGUMENTS UNLESS REQUESTED BY THE COURT*
JENS ERIK SORENSEN, as Trustee of SORENSEN RESEARCH AND DEVELOPMENT TRUST, Plaintiff, v.	Case No. 07-CV-2121

GIANT INTERNATIONAL (USA) LTD., a Delaware corporation, and DOES 1-10,

Defendants.

and related counterclaims.

JENS ERIK SORENSEN, as Trustee of SORENSEN RESEARCH AND DEVELOPMENT TRUST,

Plaintiff,

v.

ESSEPLAST (USA) NC, INC., a Delaware corporation, and DOES 1-100,

Defendants.

and related counterclaims

Case No. 07cv2277

JENS ERIK SORENSEN, as Trustee of SORENSEN RESEARCH AND DEVELOPMENT TRUST,

Plaintiff,

v.

HELEN OF TROY TEXAS CORPORATION; OXO INTERNATIONAL LTD.; and DOES 1 – 100,

Defendants.

Case No. 07cv2278

JENS ERIK SORENSEN, as Trustee of SORENSEN RESEARCH AND DEVELOPMENT TRUST,

Plaintiff,

v.

ENERGIZER HOLDINGS INC, a Missouri corporation; EVEREADY BATTERY COMPANY, INC.; and DOES 1 – 100,

Defendants.

and related counterclaims.

Case No. 07cv2321

JENS ERIK SORENSEN, as Trustee of SORENSEN RESEARCH AND DEVELOPMENT TRUST,

Case No. 08cv0025

Plaintiff v. EMERSON ELECTRIC CO., a Missouri corporation; ONE WORLD TECHNOLOGIES, INC., a Delaware corporation; RIDGE TOOL COMPANY, an Ohio corporation; RIDGID, INC., a Delaware corporation; and DOES 1 – 100 Defendants. and related counterclaims	
JENS ERIK SORENSEN, as Trustee of SORENSEN RESEARCH AND DEVELOPMENT TRUST, Plaintiff v. RYOBI TECHNOLOGIES, INC., a Delaware corporation; TECHTRONIC INDUSTRIES NORTH AMERICA, INC., a Delaware corporation; and DOES 1 – 100, Defendants.	Case No. 08cv0060
JENS ERIK SORENSEN, as Trustee of SORENSEN RESEARCH AND DEVELOPMENT TRUST, Plaintiff v. SENCO PRODUCTS, INC., an Ohio corporation; and DOES 1 – 100, Defendants.	Case No. 08cv0070
JENS ERIK SORENSEN, as Trustee of SORENSEN RESEARCH AND DEVELOPMENT TRUST, Plaintiff v. INFORMATICS, INC., a Texas Corporation; INFORMATICS HOLDINGS, INC., a Delaware Corporation; DATALOGIC SCANNING, INC.	Case No. 08cv0134

Corporation; DATALOGIC SCANNING, INC., a Delaware Corporation; DATALOGIC SCANNING HOLDINGS, INC., a New York Corporation.

Defendants.

JENS ERIK SORENSEN, as Trustee of SORENSEN RESEARCH AND DEVELOPMENT TRUST,

Plaintiff

v.

SANYO NORTH AMERICA CORPORATION, a Delaware Corporation; and DOES 1 – 100,

Defendants.

Case No. 08cv0135

JENS ERIK SORENSEN, as Trustee of SORENSEN RESEARCH AND DEVELOPMENT TRUST,

Plaintiff

v.

MOTOROLA, INC., a Delaware Corporation; and DOES 1 – 100,

Defendants.

Case No. 08cv0136

JENS ERIK SORENSEN, as Trustee of SORENSEN RESEARCH AND DEVELOPMENT TRUST,

Plaintiff

v.

CTT TOOLS, INC., a California Corporation; and DOES 1 – 100,

Defendants.

Case No. 08cv0231

JENS ERIK SORENSEN, as Trustee of SORENSEN RESEARCH AND DEVELOPMENT TRUST,

Plaintiff

v.

ALLTRADE TOOLS, LLC., a California

Case No. 08cv0232

Corporation; and DOES 1 – 100,

Defendants.

JENS ERIK SORENSEN, as Trustee of SORENSEN RESEARCH AND DEVELOPMENT TRUST,

Plaintiff

v.

GLOBAL MACHINERY COMPANY, an Australian company; GMCA PTY. LTD., an Australian company; TRAPONE CORPORATION PTY. LTD., an Australian company; and DOES 1 – 100,

Case No. 08cv0233

JENS ERIK SORENSEN, as Trustee of SORENSEN RESEARCH AND DEVELOPMENT TRUST,

Plaintiff

v.

EMISSIVE ENERGY CORP., a Delaware Corporation; and DOES 1 – 100,

Defendants.

Case No. 08cv0234

JENS ERIK SORENSEN, as Trustee of SORENSEN RESEARCH AND DEVELOPMENT TRUST,

Plaintiff

v.

METABO CORPORATION, a Delaware Corporation; METABOWERKE GMBH, a German Corporation; and DOES 1 – 100,

Defendants.

Case No. 08cv0304

JENS ERIK SORENSEN, as Trustee of SORENSEN RESEARCH AND DEVELOPMENT TRUST,

Plaintiff

v.

RALLY MANUFACTURING, INC., a Florida

Case No. 08cv0305

Corporation; and DOES 1 – 100, Defendants.	)))
JENS ERIK SORENSEN, as Trustee of SORENSEN RESEARCH AND DEVELOPMENT TRUST, Plaintiff v. SUNBEAM PRODUCTS, INC., a Delaware Corporation; and DOES 1 – 100, Defendants.	) Case No. 08cv0306
JENS ERIK SORENSEN, as Trustee of SORENSEN RESEARCH AND DEVELOPMENT TRUST, Plaintiff v. STAR ASIA, U.S.A., LLC, a Washington Corporation; and DOES 1 – 100, Defendants.	) Case No. 08cv0307
JENS ERIK SORENSEN, as Trustee of SORENSEN RESEARCH AND DEVELOPMENT TRUST, Plaintiff v. LOGITECH INC., a California Corporation; and DOES 1 – 100, Defendants.	) Case No. 08cv0308
JENS ERIK SORENSEN, as Trustee of SORENSEN RESEARCH AND DEVELOPMENT TRUST, Plaintiff v. CENTRAL PURCHASING, LLC, a California Corporation; and DOES 1 – 100,	) Case No. 08cv0309

Defendants.)

JENS ERIK SORENSEN, as Trustee of SORENSEN RESEARCH AND DEVELOPMENT TRUST,) Case No. 08cv0411

Plaintiff

v.

KYOCERA INTERNATIONAL, INC., a California Corporation; KYOCERA WIRELESS CORP., a California Corporation; and DOES 1 – 100,

Defendants.

JENS ERIK SORENSEN, as Trustee of SORENSEN RESEARCH AND DEVELOPMENT TRUST,) Case No. 08cv0559

Plaintiff

v.

DMS HOLDINGS, INC. d.b.a. MABIS HEALTHCARE and DURO-MED INDUSTRIES, a a Delaware Corporation; and DOES 1 – 100,

Defendants.

INTRODUCTION

The 23 patent infringement cases identified below were filed by Plaintiff Jens Erik Sorensen, Trustee of Sorensen Research And Development Trust ("Sorensen") seeking redress for infringement of U.S. Patent No. 4,935,184 ("'184 patent"). All are currently pending in this District and all have been assigned to District Judge Barry T. Moskowitz.

Sorensen seeks to consolidate these related cases pursuant to Rule 42(a) of the *Federal Rules of Civil Procedure* because these cases have overlapping questions of law and fact. Specifically, all of the cases allege infringement of the same patent and the Court has already indicated an intention to conduct a joint claim construction hearing. All of the responding defendants thus far have claimed that the '184 patent is invalid, and have also asserted entitlement to a stay pending completion of *ex parte* reexamination proceedings requested by defendants in the low-numbered Black & Decker case.

Both Court and all parties would benefit from consolidation of claim construction, discovery, and other related matters. Thus, consolidation of these actions is appropriate.

PROCEDURAL BACKGROUND

Presently pending in this District are 23 related patent infringement cases[1], the short names of which are as follows:

Abbr. Case Name	Case No.	Date Filed
Sorensen v. Black & Decker, et al	06cv1572	Aug 7, 2006
Sorensen v. Giant Int'l	07cv2121	Nov 6, 2007
Sorensen v. Esseplast	07cv2277	Dec 4, 2007
Sorensen v. Helen of Troy	07cv2278	Dec 4, 2007
Sorensen v. Energizer	07cv2321	Dec 11, 2007
Sorensen v. Emerson	08cv0060	Jan 10, 2008
Sorensen v. Ryobi	08cv0070	Jan 11, 2008
Sorensen v. Senco	08cv0071	Jan 11, 2008
Sorensen v. Informatics	08cv0134	Jan 23, 2008
Sorensen v. Sanyo	08cv0135	Jan 23, 2008
Sorensen v. Motorola	08cv0136	Jan 23, 2008
Sorensen v. CTT Tools	08cv0231	Feb 5, 2008
Sorensen v. Alltrade	08cv0232	Feb 5, 2008
Sorensen v. Global Machinery	08cv0233	Feb 5, 2008
Sorensen v. Emissive Energy	08cv0234	Feb 5, 2008
Sorensen v. Metabo	08cv0304	Feb 15, 2008
Sorensen v. Rally	08cv0305	Feb 15, 2008

[1] An additional case based on the same patent is Sorensen v. Johnson Level, Case No. 08cv0025. Consolidation of this case is not sought because it has already had a default entered.

Sorensen v. Sunbeam	08cv0306	Feb 15, 2008
Sorensen v. Star Asia	08cv0307	Feb 15, 2008
Sorensen v. Logitech	08cv0308	Feb 15, 2008
Sorensen v. Central Purchasing	08cv0309	Feb 15, 2008
Sorensen v. Kyocera	08cv0411	Mar 4, 2008
Sorensen v. DMS Holdings	08cv0559	Mar 25, 2008

Stays have been issued in Sorensen v. Black & Decker (3:06-cv-01572), Sorensen v. Giant (3:07cv2121), Sorensen v. Esseplast (3:07-cv-02277), Sorensen v. Energizer (3:07-cv-02321), Sorensen v. Helen of Troy Texas Corporation (3:07-cv-02278).

Motions for Stay are pending in Sorensen v. Emerson (3:08-cv-00060); Sorensen v. Global Machinery (3:08-cv-00233), Sorensen v. Kyocera (3:08-cv-00411), Sorensen v. Rally (3:08-cv-00305), Sorensen v. Ryobi (3:08-cv-00070), Sorensen v. Senco (3:08-cv-00071), Sorensen v. Central Purchasing (3:08-cv-00309).

In all unstayed cases, Sorensen has filed Motions to Modify Patent Local Rules Schedule to Accelerate Identification of Claimed Invalidating Prior Art and intends to request the same relief in the stayed cases.

ARGUMENT

THIS COURT SHOULD CONSOLIDATE THESE RELATED CASES FOR PURPOSES OF EFFICIENCY.

Fed.R.Civ.P. Rule 42(a) allows this Court to order consolidation of separate actions:

> When actions involving a common question of law and fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated;

> and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

Consolidation pursuant to the Rule 42(a) is proper where, as here, actions involve common questions of law and fact. *In re Equity Funding Corp. of Am. Sec. Litig.*, 416 F. Supp. 161, 175 (C.D. Cal. 1976). This Court has broad discretion under this Rule to consolidate cases pending within this District. *Perez-Funez v District Director, Immigration and Naturalization Serv.*, 611 F. Supp. 990, 994 (C.D. Cal. 1984) ("[A] Court has broad discretion in deciding whether or not to grant a motion for consolidation, although, typically, consolidation is favored.") (citation omitted). Even if there are some questions that are not common, consolidation is not precluded. *Batazzi v. Petroleum Helicopters, Inc.*, 664 F. 2d 49, 50 (5th Cir. 1981); See *Central Motor Co. v. United States*, 583 F. 2d 470 (10th Cir. 1978).

Common questions of law and fact abound in these cases. All the cases allege infringement of United States Patent No. 4,935,184 and claim construction of the patent should be conducted jointly.

All of the responding defendants have made *pro forma* assertions of invalidity of the patent. The basis for these assertions should be disclosed so that any asserted prior art can be brought before the PTO during the existing reexamination proceedings that have prompted the pending stays of litigation.

All of the responding defendants have asserted entitlement to a stay pending completion of *ex parte* reexamination proceedings requested by Black & Decker, Phillips Plastics and Hi-Tech Plastics. Thus far, the Court has granted stays to every additional defendant (after the Black & Decker defendants) requesting a stay on this basis, even though the most recent filed Opposition to Motion for Stay (Sorensen v. Energizer, Case No. 07cv2321) contained new information demonstrating that reexaminations were likely to take much longer than the two years anticipated by the Court when the initial stay was entered.

Because of the significant overlap of legal and factual issues, these cases are particularly appropriate for consolidation.

CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that this Court consolidate the related actions identified herein pursuant to Fed.R.Civ.P. Rule 42(a).

Dated this Wednesday, April 09, 2008.

Respectfully submitted,

JENS ERIK SORENSEN, as Trustee of SORENSEN RESEARCH AND DEVELOPMENT TRUST, Plaintiff

/s/ Melody A. Kramer
J. Michael Kaler
Melody A. Kramer
Patricia A. Shackelford
Attorneys for Plaintiff